



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/062,156

01/30/2002

Brian Minear

010182

8738

23696 7590 01/08/2009  
QUALCOMM INCORPORATED  
5775 MOREHOUSE DR.  
SAN DIEGO, CA 92121

EXAMINER

GRAHAM, CLEMENT B

ART UNIT

PAPER NUMBER

3696

NOTIFICATION DATE

DELIVERY MODE

01/08/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com  
kascanla@qualcomm.com  
nanm@qualcomm.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/062,156	<b>Applicant(s)</b> MINEAR ET AL.	
	<b>Examiner</b> Clement B. Graham	<b>Art Unit</b> 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/16/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-42 remained pending in this Application.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 1, is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1, recite a method for performing automated distribution and billing, comprising, providing, receiving, configuring, transmitting.

Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claim 1, is directed towards a method for performing automated distribution and billing, comprising, providing, receiving, configuring, transmitting steps. Steps can be interpreted as consisting of software per se, and software is not a patentable subject matter because it is not fall under a statutory class as being a process, machine, manufacture, or composition of matter.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-42, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak U.S Patent 6, 606, 744 in view of Reed U.S Patent: 6, 757, 710).

As per claim 1, Mikurak discloses a method for performing automated distribution and billing, comprising:

providing at a server negotiation forum between a delivery entity and a receiver entity, wherein the delivery entity corresponds to a developer of an application, wherein the receiver entity corresponds to a distributor of the application, wherein the negotiation forum allows for a virtual negotiation of billing-related metadata between the delivery\_entity and the receiver entity for the application, wherein at least a portion of the billing-related metadata relates to how to account for distribution of the application by the receiver entity to a wireless device operable on a network of the receiver entity and corresponding to a subscriber;

receiving, at the negotiation forum, at least one proposed billing-related metadata associated with the application from at least one of the delivery entity or the receiver entity (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67) receiving an acceptance of the proposed billing-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to billing-related metadata corresponding to the application, the delivery entity and the receiver entity receiving indication that a transaction involving the application and the receiver entity has occurred; and

transmitting billing information only to the receiver entity to account for the transaction, wherein the billing information is based on the agreed-to billing-related metadata, wherein the billing information includes a developer payment fee and transaction data corresponding to the transaction, wherein the transaction data is operable by the receiver entity to derive an application download event for billing the subscriber (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67).

Mikurak fail to explicitly teach wherein the billing information is based on the agreed-to billing-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on.(see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include billing information is based on the agreed-to billing-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 2, Mikurak discloses wherein the transaction includes information about the application being downloaded to a wireless device. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 3, Mikurak discloses wherein the negotiation forum uses a secure extranet accessible by the delivery entity and receiver entity. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 4, Mikurak discloses wherein the agreed-to billing related metadata includes a price to charge the wireless device for the application. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 5, Mikurak discloses wherein the receiver entity comprises a carrier. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 6, Mikurak discloses wherein the delivery entity comprises a developer. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 7, Mikurak discloses a system for performing automated distribution and billing, comprising:

means for providing a negotiation forum between a delivery entity and a receiver entity wherein the delivery entity corresponds to a developer of an application, wherein the receiver entity corresponds to a distributor of the application, wherein the negotiation forum allows for a virtual negotiation of billing-related metadata between the delivery entity and the receiver entity for the application, wherein at least a portion of the billing-related metadata relates to how to account for distribution of the application by the receiver entity to a wireless device operable on a network of the receiver entity and corresponding to a subscriber;

means for receiving, at the negotiation forum, at least one proposed billing-related metadata associated with the application from at least one of the delivery entity or the receiver entity(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) for presenting means for receiving an acceptance of the proposed billing-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to billing-related metadata corresponding to the application, the delivery entity and the receiver entity(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) means for receiving indication that a transaction involving the application and the receiver entity has occurred and transmitting billing information only to the receiver entity to account for the transaction, wherein the billing information is based on the agreed-to billing-related metadata, wherein the billing information includes a developer payment fee and transaction data corresponding to the transaction, wherein the transaction data is operable by the receiver entity to derive an application download event for billing the subscriber (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67).

Mikurak fail to explicitly teach wherein the billing information is based on the agreed-to billing-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on.(see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include billing information is based on the agreed-to billing-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 8, Mikurak discloses wherein the transaction includes information about the application being downloaded to a wireless device. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 9, Mikurak discloses wherein the negotiation forum uses a secure extranet accessible by the delivery entity and receiver entity. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 10, Mikurak discloses wherein the agreed-to billing related metadata includes a price to charge the wireless device for the application. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 11, Mikurak discloses a computer-readable medium comprising instructions, which, when executed by a computer, cause the computer to perform operations, the instructions comprising:  
at least one instruction for providing a negotiation forum between a delivery entity and a receiver

entity, wherein the delivery entity corresponds to a developer of an application, wherein the receiver entity corresponds to a distributor of the application, wherein the negotiation forum allows for a virtual negotiation of billing related metadata between the delivery entity and the receiver entity for the application(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67)

wherein at least a portion of the billing-related metadata relates to how to account for distribution of the application by the receiver entity to a wireless device operable on a network of the receiver entity(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) at least one instruction for receiving, at the negotiation forum, at least one proposed billing-related metadata associated with the application from at least one of the delivery entity or the receiver entity and corresponding to a subscriber (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) at least one instruction for receiving an acceptance of the proposed billing-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to billing-related metadata corresponding to the application, the delivery entity and the receiver entity;  
at least one instruction for receiving indication that a transaction involving the application and the receiver entity has occurred and at least one instruction for transmitting billing information on: to the receiver entity to account for the transaction, wherein the billing information is based on the agreed-to billing-related metadata, wherein the billing information includes a developer payment fee and transaction data corresponding to the transaction, wherein the transaction data is operable by the receiver entity to derive an application download event for billing the subscriber (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly teach wherein the billing information is based on the agreed-to billing-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider



program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on.(see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include billing information is based on the agreed-to billing-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 12, Mikurak discloses, wherein the transaction includes information about the application being downloaded to a wireless device. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 13, Mikurak discloses wherein the negotiation forum uses a secure extranet accessible by the delivery and receiver entity. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 14, Mikurak discloses wherein the agreed-to billing-related metadata includes a price to charge the wireless device for the application. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 15, Mikurak discloses an automated distribution and billing system, comprising: an extranet accessible by multiple carriers and multiple developers, wherein each developer corresponds to a creator of an application, wherein each carrier corresponds to a distributor of applications(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) wherein the extranet defines a negotiation forum that enables a virtual negotiation of billing-related metadata between a respective carrier and a respective developer for a respective application, wherein at least a portion of the billing-related metadata relates to how to account for distribution of the respective application by the respective carrier to a wireless device operable on a network of the respective carrier(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) a

server having a central repository that stores agreed-to billing-related metadata an corresponding to the respective application, the respective carrier and the respective developer, wherein the agreed-to billing-related metadata comprises respective billing-related metadata accepted by both the respective carrier and the respective developer during the virtual negotiation(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67)

and a transaction server operable to receive transaction data corresponding to a downloading of the respective application from the respective carrier, and, using the corresponding agreed-to billing-related metadata (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly teach operable to determine billing information associated with the downloading of the application.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on.(see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include operable to determine billing information associated with the downloading of the application taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 16, Mikurak discloses wherein the transaction server is further operable to send the billing information to a carrier. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 17, Mikurak discloses wherein the transaction server is further operable to send the billing information to a developer.

As per claim 18, Mikurak discloses wherein the transaction data is further corresponds to downloading of the respective application to a wireless device. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 19, Mikurak discloses a system for distributing applications over a wireless network, comprising:

a centralized processor operable to perform administrative functions associated with downloading an application to a wireless device, wherein the centralized processor comprises agreed-to billing-related metadata corresponding to the application, a developer of the application and a carrier accepted by both the carrier and the developer during a virtual negotiation(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) and wherein at least a portion of the agreed-to billing-related metadata relates to how to account for distribution of the application by the carrier to a respective wireless device operable on a network of the carrier(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) a local processor connected to the centralized processor and operable to receive catalog data and the application from the centralized processor, to transmit the catalog data and the application to the wireless device, and to record transaction data associated with the transmission of the application to the wireless device(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) and a transaction server connected to the centralized processor and the local processor and operable to receive the agreed-to billing-related metadata from the centralized processor, receive the transaction data from the local processor. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly teach a process the agreed-to billing-related metadata information and the transaction data for billing.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on.(see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include a process the agreed-to billing-related metadata information and the transaction data for billing taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 20, Mikurak discloses wherein the agreed-to billing-related metadata further comprises a payment amount to pay the delivery entity for each distribution of the application. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 21, Mikurak discloses further comprising sending the catalog to an application download server of the receiver entity to enable distribution of the application to the wireless device.( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 22 Mikurak discloses further comprising: receiving, at the negotiation forum, at least one proposed usage-related metadata associated with the application from at least one of the delivery entity and the receiver entity, wherein at least a portion of the proposed usage-related metadata relates to usage limitations of the application on the device operable on the

network of the receiver entity (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67)

receiving an acceptance of the proposed usage-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to usage-related metadata corresponding to the application, the delivery entity and the receiver entity ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly teach wherein configuring the catalog further comprises including the correspondence between the application and the agreed to usage related metadata such that the transaction includes the agreed-to usage-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on (see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include teach wherein configuring the catalog further comprises including the correspondence between the application and the agreed to usage related metadata such that the transaction includes the agreed-to usage-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 23, Mikurak discloses wherein the agreed-to billing-related metadata further comprises a payment amount to pay the delivery entity for each distribution of the application.

see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 24, Mikurak discloses further comprising means for sending the catalog to an application download server of the receiver entity to enable distribution of the application to the wireless device (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 25, Mikurak discloses further comprising: means for receiving, at the negotiation forum, at least one proposed usage-related metadata associated with the application from at least one of the delivery entity and the receiver entity, wherein at least a portion of the proposed usage-related metadata relates to usage limitations of the application on the device operable on the network of the receiver entity see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) means for receiving an acceptance of the proposed usage-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to usage-related metadata corresponding to the application, the delivery entity and the receiver entity; and wherein the means for configuring the catalog further comprises.(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly configuring to include the correspondence between the application and the agreed-to usage-related metadata such that the transaction includes the agreed-to usage-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be

accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on (see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include configuring to include the correspondence between the application and the agreed-to usage-related metadata such that the transaction includes the agreed-to usage-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 26, Mikurak discloses wherein the agreed-to billing- related metadata further comprises a payment amount to pay the delivery entity for each distribution of the application. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 27, Mikurak discloses further comprising at least one instruction for sending the catalog to an application download server of the receiver entity to enable distribution of the application to the wireless device. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 28, Mikurak discloses further comprising: at least one instruction for receiving, at the negotiation forum, at least one proposed usage-related metadata associated with the application from at least one of the delivery entity and the receiver entity, wherein at least a portion of the proposed usage-related metadata relates to usage limitations of the application on the device operable on the network of the receiver entity.(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) at least one instruction for receiving an acceptance of the proposed usage-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to usage-related metadata corresponding to the application, the delivery entity and the receiver entity (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67) and wherein the at least one instruction for .(see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

Mikurak fail to explicitly configuring the catalog further comprises at least one instruction for including the correspondence between the application and the agreed-to usage-related metadata such that the transaction includes the agreed-to usage-related metadata.

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on (see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it would have been old and well known in the art at the time the invention was made to modify the teachings of Mikurak to include configuring the catalog further comprises at least one instruction for including the correspondence between the application and the agreed-to usage-related metadata such that the transaction includes the agreed-to usage-related metadata taught by Reed in order to coordinate the transfer of data, metadata, and instructions between databases in order to control and process communications.

As per claim 29, Mikurak discloses wherein the agreed-to billing-related metadata includes a price to charge the wireless device for the respective application. see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 30, Mikurak discloses wherein the agreed-to billing-related metadata further comprises a payment amount to pay the respective developer for each distribution of the respective application (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).



As per claim 31, Mikurak discloses wherein the central repository further comprises a catalog including the respective application, wherein the catalog is transmittable to a download server of the respective carrier to enable distribution of the respective application to the wireless device ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 32, Mikurak discloses wherein the negotiation forum is further operable to receive at least one proposed usage-related metadata associated with the application from at least one of the delivery entity and the receiver entity, wherein at least a portion of the proposed usage-related metadata relates to usage limitations of the application on the device operable on the network of the receiver entity see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67)

wherein the negotiation forum is further operable to receive an acceptance of the proposed usage-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to usage-related metadata corresponding to the application, the delivery entity and the receiver entity, and wherein the central repository further comprises the catalog further including the correspondence between the application and the agreed to usage related metadata such that the transaction includes the agreed-to usage-related metadata. (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 333, Mikurak discloses further comprising:  
forwarding a developer payment to the delivery entity based on the transaction data, wherein the developer payment is based on the agreed-to billing-related metadata;  
wherein transmitting billing information to the receiver entity further includes transmitting an enablement fee corresponding to a fee for providing the negotiation forum, for providing the billing information, and for providing the developer payment ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 34, Mikurak discloses further comprising determining, prior to transmitting billing information, that the transaction includes the wireless device billing event based on the received transaction data and previously-stored application-related information for the wireless device ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 35, Mikurak discloses further comprising:  
means for forwarding a developer payment to the delivery entity based on the transaction data, wherein the

developer payment is based on the agreed-to billing-related metadata;  
wherein the means for transmitting billing information to the receiver entity further includes means for transmitting an enablement fee, wherein the enablement fee corresponds to a fee for providing the negotiation forum, for providing the billing information, and for providing the developer payment ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 36, Mikurak discloses further comprising means for determining, prior to transmitting billing information, that the transaction includes the wireless device billing event based on the received transaction data and previously-stored application-related information for the wireless device ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 37, Mikurak discloses further comprising:  
at least one instruction for forwarding a developer payment to the delivery entity based on the transaction data, wherein the developer payment is based on the agreed-to billing-related metadata;  
wherein the at least one instruction for transmitting billing information to the receiver entity further includes at least one instruction for transmitting an enablement fee, wherein the enablement fee corresponds to a fee for providing the negotiation forum, for providing the billing information, and for providing the developer payment ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 38, Mikurak discloses further comprising at least one instruction for determining, prior to transmitting billing information, that the transaction includes the wireless device billing event based on the received transaction data and previously-stored application-related information for the wireless device ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 39, Mikurak discloses wherein the transaction server is further operable to:  
forward a developer payment to the developer based on the transaction data, wherein the developer payment is based on the agreed-to billing-related metadata;  
wherein the billing information further includes an enablement fee, wherein the enablement fee corresponds to a fee for providing the negotiation forum, for providing the billing information, and for providing the developer payment ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 40, Mikurak discloses wherein the transaction server is further operable to determine, prior to transmitting the billing information, that the transaction data includes the wireless device billing event based on comparing the transaction data with previously-stored application-related information for the wireless device ( see

column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 41, Mikurak discloses wherein the transaction server is further operable to:  
forward a developer payment to the developer based on the transaction data, wherein the developer payment is based on the agreed-to billing-related metadata;  
wherein the billing information further includes an enablement fee, wherein the enablement fee corresponds to a fee for providing the negotiation forum, for providing the billing information, and for providing the developer payment ( see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

As per claim 42, Mikurak discloses 42. (New) The system of claim 41, wherein the transaction server is further operable to determine, prior to generating the billing information, that the transaction data includes the wireless device billing event based on comparing the transaction data with previously-stored application-related information for the wireless device (see column 118 lines 58-67 and column 119 lines 1-67 and column 133 lines 14-54 and column 304 lines 58-67).

## **Conclusion**

### **RESPONSE TO ARGUMENTS**

6. Applicant's arguments filed 10/16/2008 has been fully considered but they are not persuasive for the following reasons.

In response to Applicant's arguments that Mikurak and Reed fail to teach or suggest "receiving, at the negotiation forum, at least one proposed billing-related metadata associated with the application from at least one of the delivery entity or the receiver entity (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67) receiving an acceptance of the proposed billing-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to billing-related metadata corresponding to the application, the delivery entity and the receiver entity receiving indication that a transaction involving the application and the receiver entity has occurred and transmitting billing information only to the receiver entity to account for the transaction, wherein the billing information is based on the agreed-to billing-related metadata, wherein the billing information includes a developer payment fee and transaction data corresponding to the transaction, wherein the transaction data is operable by the receiver entity to derive an application download event for billing the subscriber

wherein the billing information is based on the agreed-to billing-related metadata the examiner disagrees with Applicant's because these claimed limitations were addressed as stated".

Mikurak discloses providing at a server negotiation forum between a delivery entity and a receiver entity, wherein the delivery entity corresponds to a developer of an application, wherein the receiver entity corresponds to a distributor of the application (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67) wherein the negotiation forum allows for a virtual negotiation of billing-related metadata between the delivery entity and the receiver entity for the application, wherein at least a portion of the billing-related metadata relates to how to account for distribution of the application by the receiver entity to a wireless device operable on a network of the receiver entity and corresponding to a subscriber; receiving, at the negotiation forum, at least one proposed billing-related metadata associated with the application from at least one of the delivery entity or the receiver entity (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67) receiving an acceptance of the proposed billing-related metadata by the delivery entity and the receiver entity, thereby defining agreed-to billing-related metadata corresponding to the application, the delivery entity and the receiver entity receiving indication that a transaction involving the application and the receiver entity has occurred and transmitting billing information only to the receiver entity to account for the transaction, wherein the billing information is based on the agreed-to billing-related metadata, wherein the billing information includes a developer payment fee and transaction data corresponding to the transaction, wherein the transaction data is operable by the receiver entity to derive an application download event for billing the subscriber (see column 118 lines 58-67 and column 119 lines 1-67 and column 304 lines 58-67).

However Reed discloses executing on the provider computer 1 and the consumer computer perform the functions necessary to transfer, maintain, and update the information at both locations. A program represents a set of stored instructions which are executed in a processor of the computer to process data, transmit and receive data, and produce displays. The provider program operates to transmit changes in information stored in the provider database at the provider computer. When changes are made to the information and the database, the provider program operates to disseminate the changed information through the communications network. In the pushing method, the provider program transmits the changed information, for example through e-mail, to the consumer computers of all intended recipients. In the pulling method, the

changed information is stored on a distribution server, such as a web server, which then can be accessed by the consumer computer. Any type of distribution server may be used, including network file servers, FTP servers, gopher servers, and so on (see column 13 lines 15-54 and column 14 lines 42-64).

Therefore it is obviously clear that Applicant's claimed limitations were addressed within the teachings of Mikurak and Reed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B. Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantzy Poinvil/

Primary Examiner, Art Unit 3696

Application/Control Number: 10/062,156  
Art Unit: 3696

Page 21

CG

Jan 4, 2008